

STATE OF MONTANA TERM CONTRACT

Department of Administration
State Procurement Bureau
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<http://www.discoveringmontana.com/doa/gsd>

T.C. #: SPB05-761G
Title: STATEWIDE PURCHASING CARD PROGRAM
This is an exclusive contract.

CONTRACT TERM	FROM	March 21, 2005	CONTRACT STATUS	NEW (X)
	TO	October 31, 2008		RENEW ()
VENDOR ADDRESS	U.S. BANK NATIONAL ASSOCIATION ND 200 SOUTH 6 TH STREET EP-MN-L26C MINNEAPOLIS, MN 55402		ORDER ADDRESS	SAME
ATTN:	PAM MILLER		ATTN:	SAME
PHONE:	(503) 632-4682		PHONE:	SAME
FAX:	(503) 632-4971		FAX:	SAME
E-MAIL:	pamela.miller@usbank.com		E-MAIL:	SAME

PRICES: PER CONTRACT

DELIVERY: PER CONTRACT

F.O.B.: PER CONTRACT

TERMS: PER CONTRACT

REMARKS:

IFB/RFP NO.: SPB05-761G

JEANNE WOLF, Contracts Officer

Date: March 21, 2005

AUTHORIZED SIGNATURE

APPENDIX A: STANDARD TERMS AND CONDITIONS

By submitting a response to this invitation for bid, request for proposal, limited solicitation, or acceptance of a contract, the vendor agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to this solicitation or contract.

ACCEPTANCE/REJECTION OF BIDS, PROPOSALS, OR LIMITED SOLICITATION RESPONSES: The State reserves the right to accept or reject any or all bids, proposals, or limited solicitation responses, wholly or in part, and to make awards in any manner deemed in the best interest of the State. Bids, proposals, and limited solicitation responses will be firm for 30 days, unless stated otherwise in the text of the invitation for bid, request for proposal, or limited solicitation.

ACCESS AND RETENTION OF RECORDS: The contractor agrees to provide the department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance (Mont. Code Ann. § 18-1-118). The contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

ALTERATION OF SOLICITATION DOCUMENT: In the event of inconsistencies or contradictions between language contained in the State's solicitation document and a vendor's response, the language contained in the State's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the vendor's disqualification and possible debarment.

ASSIGNMENT, TRANSFER AND SUBCONTRACTING: The contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Mont. Code Ann. § 18-4-141.)

AUTHORITY: The following bid, request for proposal, limited solicitation, or contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

COMPLIANCE WITH LAWS: The contractor must, in performance of work under the contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

CONFORMANCE WITH CONTRACT: No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without prior written consent of the State Procurement Bureau. Supplies delivered which do not conform to the contract terms, conditions, and specifications may be rejected and returned at the contractor's expense.

DEBARMENT: The contractor certifies, by submitting this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by the State.

DISABILITY ACCOMMODATIONS: The State of Montana does not discriminate on the basis of disability in
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admission to, access to, or operations of its programs, services, or activities. Individuals, who need aids, alternative document formats, or services for effective communications or other disability-related accommodations in the programs and services offered, are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

FACSIMILE RESPONSES: Facsimile responses will be accepted for invitations for bids, small purchases or limited solicitations ONLY if they are completely received by the State Procurement Bureau prior to the time set for receipt. Bids, or portions thereof, received after the due time will not be considered. Facsimile responses to requests for proposals are ONLY accepted on an exception basis with prior approval of the procurement officer.

FAILURE TO HONOR BID/PROPOSAL: If a bidder/offeror to whom a contract is awarded refuses to accept the award (PO/contract) or, fails to deliver in accordance with the contract terms and conditions, the department may, in its discretion, suspend the bidder/offeror for a period of time from entering into any contracts with the State of Montana.

FORCE MAJEURE: Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

HOLD HARMLESS/INDEMNIFICATION: The contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

LATE BIDS AND PROPOSALS: Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to assure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.

PAYMENT TERM: All payment terms will be computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the State is allowed 30 days to pay such invoices. All contractors will be required to provide banking information at the time of contract execution in order to facilitate State electronic funds transfer payments.

RECIPROCAL PREFERENCE: The State of Montana applies a reciprocal preference against a vendor submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for nonconstruction services for public works as defined in section 18-2-401(9), MCA, and then only if federal funds are not involved. For a list of states that grant resident preference, see <http://www.discoveringmontana.com/doa/gsd/css/Resources/ReciprocalPreference.asp>.

REFERENCE TO CONTRACT: The contract or purchase order number MUST appear on all invoices, packing lists, packages and correspondence pertaining to the contract.

REGISTRATION WITH THE SECRETARY OF STATE: Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting

business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://www.sos.state.mt.us>.

SEPARABILITY CLAUSE: A declaration by any court, or any other binding legal source, that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

SHIPPING: Supplies shall be shipped prepaid, F.O.B. Destination, unless the contract specifies otherwise.

SOLICITATION DOCUMENT EXAMINATION: Vendors shall promptly notify the State of any ambiguity, inconsistency, or error, which they may discover upon examination of a solicitation document.

TAX EXEMPTION: The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED: Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (Mont. Code Ann. § 18-5-603.) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

TERMINATION OF CONTRACT: Unless otherwise stated, the State may, by written notice to the contractor, terminate the contract in whole or in part at any time the contractor fails to perform the contract.

UNAVAILABILITY OF FUNDING: The contracting agency, at its sole discretion, may terminate or reduce the scope of the contract if available funding is reduced for any reason. (Mont. Code Ann. § 18-4-313 (3).)

U.S. FUNDS: All prices and payments must be in U.S. dollars.

VENUE: This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Mont. Code Ann. § 18-1-401.)

WARRANTIES: The contractor warrants that items offered will conform to the specifications requested, to be fit and sufficient for the purpose manufactured, of good material and workmanship and free from defect. Items offered must be new and unused and of the latest model or manufacture, unless otherwise specified by the State. They shall be equal in quality and performance to those indicated herein. Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance and/or use desired. Exceptions will be rejected.

STATEWIDE PURCHASING CARD PROGRAM

1. OVERVIEW

The intent of the Statewide Purchasing Card Program is to permit designated state employees to make purchases for supplies and services, including travel expenses, utilizing the Contractor's One Card program. The following four state agencies are designated as "Companies" for participation in the Purchasing Card program: (1) the Department of Administration, (2) the Department of Transportation, (3) Montana State University (MSU), and (4) the University of Montana (U of M). However, a total of 33 individual state agencies participate in the program under the "Company" designated as the Department of Administration. The Department of Administration has overall responsibility for administering the Statewide Purchasing Card Program.

2. PARTIES

THIS CONTRACT, is entered into by and between the State of Montana, Department of Administration, State Procurement Bureau, (hereinafter referred to as the "State"), whose address and phone number are P.O. Box 200135, Helena, MT 59620-0135, (406) 444-2575 and U.S. Bank National Association ND, (hereinafter referred to as the "Contractor"), whose address and phone number are 200 South 6th Street, EP-MN-L26C, Minneapolis, MN 55402 and (612) 973-1289.

THE PARTIES AGREE AS FOLLOWS:

3. EFFECTIVE DATE, DURATION, AND RENEWAL

3.1 Contract Term. This contract shall take effect on March 21, 2005, and terminate on October 31, 2008, unless terminated earlier in accordance with the terms of this contract. (Mont. Code Ann. § 18-4-313.)

3.2 Contract Renewal. This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be renewed in two-year intervals, or any interval that is advantageous to the State, for a period not to exceed a total of ten years. This renewal is dependent upon legislative appropriations.

4. DEFINITIONS

Terms used in this contract have the following meanings:

"Account" means any account established by Contractor pursuant to this contract in the name of the State, its Companies and/or Cardholders, to which Debt is charged, regardless of whether or not a Card is issued in conjunction with such account.

"Association" means, collectively, the Persons who govern commercial card issuance, including, without limitation, Visa USA, Inc., Visa Canada Association, and Visa International Service Association, Inc.

"Billing Cycle" means the period of time from which a Statement is generated until the

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next Statement is generated.

“Cardholder” means an individual employee of the State and/or its Companies, named as the holder of the Account or using the Account in the name of the State and/or its Companies, regardless of whether a physical card is issued in conjunction with the Account.

“Central Account” means any Account used for consolidating Transactions from one or more other Accounts for billing purposes.

“Charge” means any transaction posted to an Account that has a debit value, including without limitation, Purchases, and Fees.

“Charge-off” means any amount due and owing that remains unpaid for 150 days after the date that it was first billed.

“Credit Limit” means, with respect to an Account, the maximum amount of Debt that can remain outstanding and unpaid on an Account.

“Credit Line” means, with respect to all Accounts, the maximum aggregated amount of Debt that can remain outstanding and unpaid on all Accounts belonging to the State.

“Debt” means all amounts charged to an Account including without limitation all amounts related to Charges that are owed to Contractor by Customer, its Companies and/or Cardholders.

“Due Date” means, with respect to a Statement, the date, as measured by the number of days after the Statement Date, for which the payment of Debt that is listed on the Statement is due.

“Fees” means only those items identified in Section 9.1.

“Fraudulent Charges” means those Charges which are not initiated, authorized or otherwise requested by the State, its Companies, and/or an Cardholder by any means (electronic, telephonic or written) and do not directly or indirectly benefit the State, its Companies, and/or a Cardholder.

“Late Fee” means the fees associated with any Debt that remain unpaid to Contractor by Customer, its Companies, and/or Cardholders after the Due Date on the Statement.

“Merchant Category Code” means the code established by Visa that identifies and classifies goods or services offered by a merchant. Each merchant designates its Merchant Category Code to Visa.

“Past Due Balance” means, with respect to a Statement, the total amount of any Debt which remains unpaid to Contractor by the State, its Companies and/or Cardholder after the Due Date specified on such Statement.

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“Person” or **“person”** means any individual, natural person, corporation, company, limited liability company, general partnership, limited partnership, limited liability partnership, unincorporated association, trust, joint venture, estate or other judicial entity or any governmental body.

“Purchase” means a purchase of goods and/or services that is charged to an Account.

“Purchasing Card” means, in connection with an Account, any purchasing card issued by Contractor pursuant to this Contract in the name of the State, a Company and/or Cardholders.

“Statement” means, with respect to one or more accounts, a periodic billing Statement from Contractor listing all Transactions posted to such Accounts.

“Transaction” means any activity posted to an Account, both debit and credits, including but not limited to Purchases, Fees and payments.

“Visa” means Visa[®] USA, Inc. and/or Visa International Service Association, Inc.

5. **EXCLUSIVE CONTRACT**

The intent of this contract is to provide state agencies with an expedited means of procuring supplies and/or services. This contract is considered to be an “Exclusive” use contract and state agencies must obtain the specified product/service from the contract holder(s), unless the contract allows otherwise. However, the State Procurement Bureau does not guarantee any minimum usage totals and it is the individual agency’s responsibility to comply with the terms of the contract. The State reserves the right to establish a separate contract with the Contractor for a personal liability travel card, or to issue a separate, negotiated solicitation as the State’s needs may warrant.

6. **CREDIT REVIEWS**

6.1. Financial Information. Since the establishment of a Purchasing Card program is an extension of credit, the State shall provide sufficient information to enable Contractor to perform periodic credit reviews. To the extent required by Contractor to verify the credit worthiness of the State, Contractor is authorized by the State to obtain credit or financial information with respect to the State that may be held by third party sources. The State agrees to provide to Contractor, from time to time, such other information regarding the business, operations, affairs, and financial condition of the State as Contractor may reasonably request. The State’s Comprehensive Annual Financial Reports are available at the following website:
<http://www.discoveringmontana.com/doa/afsd/cafr/cafr.asp>.

6.2. Credit Limits and Credit Line. Based on the available financial information, Contractor shall establish a Credit Limit for each Account and an aggregate Credit Line for all Accounts established pursuant to this Contract.

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- a. **Revising the Credit Line.** Contractor, at its sole discretion, shall have the right to revise the aggregate Credit Line for all Accounts. Contractor shall provide contemporaneous notice to the State of any decrease in the Credit Line that results in a revised Credit Line that is lower than the aggregate current amount due on all Accounts. Upon such event, the State shall have ten days to make a payment to Contractor on one or more Accounts that is sufficient to reduce the outstanding aggregate amount due to an amount that is less than the revised Credit Line.
- b. **Revising Credit Limits.** Contractor, at its sole discretion, shall have the right to revise Credit Limits on individual Accounts.
 - i. **Customer Accounts.** Contractor shall provide contemporaneous notice to the State of any decrease in a Credit Limit that results in a revised Credit Limit that is lower than the current amount due on the Account. Prior to the effective date of any decrease in the Credit Limit, the State shall have ten days to make a payment to Contractor on the Account that is sufficient to reduce the outstanding amount due for such Account to an amount that is less than the revised Credit Limit.
 - ii. **Cardholder Accounts.** Contractor, at its sole discretion, has the right to revise Credit Limits and/or limit spending activity on any Cardholder Accounts for which the Cardholder has sole and/or shared liability.
 - iii. **Fraudulent Activity.** Contractor may temporarily revise Credit Limits and/or limit spending activity on any Account for which fraudulent activity is suspected.

7. COOPERATIVE PURCHASING

The contract is restricted to the four Companies described in Section 1. The State reserves the right to negotiate the inclusion of other public procurement units at some point in the future. Any future expansion is subject to the approval of all parties.

8. SERVICES AND/OR SUPPLIES

Contractor agrees to provide to the State the following Statewide Purchasing Card Program services:

8.1 Account Management. The Contractor shall provide administrative account management in support of the purchasing card program by appointing an account

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manager who will assume overall responsibility for the coordination of all contract issues relating to the statewide purchasing card program.

8.2 Customer Support. The Contractor shall provide customer support service to purchasing card administrators and users to resolve problems, answer questions, deal with lost or stolen cards, and support in general all aspects of the statewide purchasing card program. At a minimum, the customer support service must be provided by skilled technicians who are proficient in the English language and include a toll free telephone line for assistance on a 24-hour-a-day, 7-day-a-week basis. In addition, Contractor shall provide direct telephone access to account representatives for inquiries involving accounts, billings, and all technical support questions that arise during the course of a regular business day between the hours of 8 a.m. to 5 p.m. (Mountain time), Monday through Friday.

800-344-5696 (Program Services)	24 hours per day / 7 days per week
877-887-9260 (Cardholders, Software Customer Service)	24 hours per day / 7 days per week
877-452-8083 (Program Administrators, Software Customer Service)	6:30 a.m.-8:00 p.m./ CST Monday-Friday

8.3 Training. The Contractor shall provide training and associated materials to purchasing card administrators and technical support staff that details how to use the purchasing card program and assists the state agencies in developing individual spending limitations and other program restrictions and controls. At a minimum, this training must be provided at contract implementation and then annually during the entire term of the contract. In addition, training should be provided any time there is a major software upgrade.

8.4 Management Reports. The Contractor shall provide the State with monthly management reports throughout the duration of the contract. These reports shall be available in an electronic format compatible with Microsoft Office products and accessible to state agencies from the Contractor's software system. At a minimum, Contractor's reports must include segments of airline travel, have the ability to itemize lodging expenses. Contractor will utilize commercially reasonable efforts to capture and report level 3 transaction data. For an explanation of the three transaction levels, please see the following website: <http://www.napcp.org/napcp/napcp.nsf/NavigationAll/P-Card+Basics+-+Level+1-2-3+Detail?OpenDocument>.

8.5 Bank Services. The following bank services are the minimum acceptable to the State:

- a. **Toll-Free Telephone.** The Contractor shall provide a toll-free telephone number with 24-hour availability;
- b. **Website.** The Contractor shall provide a website for problem technical issues and problem solving;
- c. **Off-site Storage of Data.** The Contractor shall provide, at its location, complete and secure data storage for all State of Montana

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credit card and transaction information. The Contractor shall provide electronic archival data to each Company as requested. Offeror shall produce a comprehensive backup and disaster recovery plan for state purchasing card data;

- d. **IT Support.** The Contractor shall provide information technology (IT) support by trained and experienced IT personnel;
- e. **On Demand Data Access.** The Contractor shall provide, as requested, complete and separate credit card and transaction information for any of the identified companies. In addition, the Contractor will provide complete documentation of table structure, relationships, etc., of database so that the data can be uploaded to a local database to allow for ad hoc queries in order to satisfy internal and external audit requirements;
- f. **Payment Methods.** The Contractor shall provide payment methods, including a description of wire transfer protocols supported;
- g. **Transaction Dispute Process.** The Contractor shall provide a transaction dispute process with online and/or offline capabilities;
- h. **Lost/Stolen Card Process.** The Contractor shall provide a process for handling lost/stolen purchasing cards to minimize any potential loss;
- i. **Transaction Data Strategy.** The Contractor shall provide a long-term plan for increasing the level of data that is passed with regard to level 1, 2, and 3 transaction data;
- j. **Fraud/Loss Provisions and Fraud Security Notification System.** The Contractor shall have in place a system to monitor and identify suspect cardholder transactions, including reports of declined transactions by Company and shall provide a fraud security notification system that protects the State against unauthorized or irregular card use;
- k. **User Groups/List Services.** The Contractor shall provide annual national and/or regional user forums/conferences and access to electronic list serves for information sharing opportunities; and
- l. **Third Party Services.** The Contractor shall provide documentation detailing all third party dependencies, including processes that are used by its system.

8.6 Software/Technology Compatibility. Currently, the following four state agencies are designated as “Companies” for participation in the Purchasing Card program: (1) the Department of Administration, (2) the Department of Transportation, (3) Montana State University (MSU), and (4) the University of Montana (U of M). However, a total of 33 individual state agencies participate in the program under the “Company” designated as the Department of Administration. Each of the “Companies” has different financial systems with unique file upload specifications. Currently, the Montana University System uses Banner software, the Department of Administration uses PeopleSoft software, and the Department of Transportation uses accounting software that was developed in-house. The Contractor’s purchasing card software must be able to seamlessly produce upload files that comply with the specifications of each of the four Companies different systems. In

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addition, the proposed software must comply with the State's IT Standards as set forth at the following website address: <http://discoveringmontana.com/itsd/policy/software.asp>. There is also the potential for adding more political subdivisions over the course of the contract that may involve other mapper and/or payment considerations. Contractor must ensure that its purchasing card software will be able to produce the various upload files required.

8.7 Conversion and Implementation Plan. The Contractor shall work with each Company to plan and implement a conversion of the existing cardholder database into the Contractor's purchasing card system and assist each Company in making a successful migration to the Contractor's system, including card issuance. The conversion process must meet with the approval of each Company. The State's current purchasing card is MasterCard, using Purchasing Accounting Reporting Information System (PARIS) software.

8.8 Technical Support. The Contractor shall provide all necessary technical support to transition to the new purchasing card program within a mutually agreed to timeframe. The Contractor shall provide all necessary technical support over the course of the contract to resolve problems or make any program adjustments that become necessary due to any information technology changes or advances, etc. Technical support personnel must be adequately trained in their area of support and be proficient in the English language.

8.9 Software/Technology. The Contractor's proposed software must be browser-based, robust, functional, easily navigable, secure, adaptable, and conform to current industry standards and the State's IT Standards as set forth at the following website address: <http://discoveringmontana.com/itsd/policy/software.asp>. It shall allow for functional and easy management of cardholder accounts and comprehensive reporting. The Contractor's software shall allow the State to create transaction files to upload into the Banner, PeopleSoft, and Department of Transportation's accounting systems. The Contractor's software must be capable of adapting to any changes to the State's accounting systems so that the purchasing card interface can continue to generate transactions in any new accounting system adopted by the State. The Contractor's software/technology at a minimum must provide the following features:

- a. **Browser-based Access** to Contractor's purchasing card software must be through a standard browser (IE5 or greater) with a minimum of downloaded additions;
- b. **Ease of Use and Flexibility;**
- c. **Security Features** to ensure secure data transfer between the Bank and the State of Montana as well as secure storage of cardholder, card number, and transaction information on bank file servers. Software shall provide means for users to establish and change their own passwords;
- d. **Security of Transaction Data, Card Numbers and Process Flow;**
- e. **Support for Real Time Access and Changes**, including account and hierarchy changes;

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- f. **Archiving Features;**
- g. **Management Capabilities for Flat File Transfer** to the various state systems;
- h. **Ability to Migrate** Current Cardholder Information to the new system without the State having to submit new applications for existing cardholders;
- i. **Process to Feed/Provide Access** to the card data;
- j. **Online Reallocation** (splitting of transactions to different accounts).
- k. **Global Program Defaults, Defaults by Company**, and the process of overriding these defaults for individual cards;
- l. **Standard Reporting Capabilities;**
- m. **Month-End Reporting Capabilities;**
- n. **Custom Reporting Capabilities;**
- o. **Standard Output Format for Reports**, e.g., pdf, Excel, Access, WORD, or other text formats; and
- p. **Documentation** to the Contractor's technology and services provided, including, but not limited to, the database structures, data dictionary, and online availability.

8.10 Credit Card Product. The Contractor shall furnish credit cards at no cost to the State that meet the following requirements:

- a. **Customization.** The credit card shall be customized per the State's requirements, including, but not limited to, artwork, logos, and colors; provided, however, that the State's requested customization must be approved by Contractor. The State shall be responsible and liable for all artwork, logos and card designs.
- b. **Security and Controls.** The Contractor shall have in place security precautions and controls that will ensure the security of the purchasing card transactions. Contractor shall provide adequate security within the software package to preclude the cardholder or anyone else with approving power from abusing the system.
- c. **Spending and Transaction Limits.** The credit card shall provide spending limits by individual purchase, daily and cycle limits, and transaction count and have the provision to block by merchant category codes as determined by the program administrator for each state agency. Both the Contractor and the state agencies shall monitor the limits.
- d. **No Annual Fee.** The Contractor shall not charge an annual fee for credit cards issued under the contract.
- e. **No Cash Advances.** The Contractor shall not allow cash advances from Automatic Teller Machines or from any financial institution.
- f. **No List Sale or Distribution.** The Contractor shall not sell or distribute a list of participating agencies/institution addresses, cardholder names and addresses, or any other information to any person, firm, or other entity for any purpose; excluding, but not limited to, the associations, third-party service providers, merchants, and merchant processors, during the course of normal business operations.

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- g. **Wide Acceptance.** The Contractor's purchasing card is accepted wherever Visa is accepted.
- h. **An Electronic and/or Paper Application Process.** The Contractor will supply an electronic and/or paper application process that minimizes cardholder exposure to identity theft. Application forms will be mutually reviewed and approved for use by each Company.
- i. **Guaranteed Time for Issuance of Card by New Cardholder.** The Contractor must indicate a guaranteed time for issuance of card to a new cardholder after a valid and properly completed application is received by the Contractor.
- j. **Process and Time Required for Issuance of Renewal/Replacement Cards.** The Contractor will promptly issue renewal cards prior to card expiration date as well as replacement cards.
- k. **Traveler's Insurance.** The Contractor will provide \$500,000 in Common Carrier Travel Accident Insurance. Common Carrier Travel Accident Insurance is primary coverage, protecting against losses caused by (a) a common carrier accident, or (b) an accident incurred on the way to or from the terminal in a common carrier (i.e., taxi, bus, or airport limousine), provided the air ticket was charged on the Contractor's Visa Corporate Card prior to departure for the terminal. The Travel Accident Insurance applies to the Cardholder, spouse, and children while traveling worldwide for business purposes, providing the entire travel fare(s) was purchased with the Corporate Card. Common carrier tickets purchased for fellow employees and tickets acquired with redeemed frequent flyer points or coupons are also covered. This insurance is automatically provided to Cardholders and/or Central Travel System (CTS) account users when their entire travel fare(s) is charged to their corporate card or CTS account.
 - i. **Auto Rental Insurance.** Full value primary Auto Rental Insurance features worldwide coverage for collision, theft, vandalism, appraisal fees, and loss of use when the rental is paid with the Contractor's Corporate Card. Auto rental insurance applies to U.S. citizens and foreign nationals traveling in the United States, as well as U.S. citizens traveling overseas. Foreign nationals traveling overseas are not eligible for this coverage.
 - ii. **Secondary Baggage Insurance.** The State's Cardholders are eligible for up to a total of \$1,250 of secondary baggage coverage when the common carrier ticket is purchased with the Contractor's Corporate Card. The individual receives reimbursement for the cost of the replacement of luggage and its contents up to the lesser of (a) the amount paid to the traveler by the common carrier, or (b) \$1,250 provided the luggage was checked

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with the common carrier and lost due to the theft or misdirection by the carrier. Reimbursement is made only if the common carrier makes a monetary reimbursement, not for other consideration.

- iii. **Travel and Emergency Services.** The Contractor provides Cardholders around the world toll-free, around-the-clock access to travel and emergency services through the Visa Assistance Center (VAC): 1-800-VISA-911 domestic; 1-410-581-9994 worldwide collect.
- iv. **Lost Luggage Assistance.** The Cardholder may receive immediate shipment of replacement items, a cash advance required as a result of the loss of luggage, and claims assistance when luggage is lost while traveling and the carrier is unable to locate it. (Note: this is not lost luggage insurance.)

- I. **List of Montana Suppliers.** The Contractor has provided a list of Montana suppliers who utilize/accept the purchasing card system offered.

9. CONSIDERATION/PAYMENT

9.1 Payment Schedule. In consideration for the statewide purchasing card program to be provided, the State shall pay according to the following schedule:

Fees/Costs	One Time Setup Fee	Typical Yearly Cost
Software License Fees	No Fee	None
Setup Fees	No Fee	None
Standard Report Fees	No Fee	None
Programming Fees (related to purchasing card software modifications) (assume a total of 100 hours of programming time yearly)	No Fee	None
Mapper Fees (programming fees associated with the production of different upload files for each of the various state financial systems)	No Fee for the first four (4); \$1,250.00 for each mapper thereafter	None
Transaction Fees (based on a total 100,000 transactions per year)	No Fee	None
Hosting Fees	No Fee	None
Customer Service Fees (assume 200 hours)	No Fee	None
Conversion Fees (assume 200 hours total conversion time)	No Fee	None
Training and Implementation Fees	No Fee	None

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(assume 200 hours of total time)		
Other Fees , i.e., replacement card overnight fee	Please refer to the <i>Proposed Fees</i> chart below:	

Annual Fee Per Card/Account	Fee waived (<i>standard fee: \$10</i>)
Late Fee (charged at 30 days past due and at each cycle date thereafter until past due balance is paid)	0.05% per day of the unpaid past due balance
Travel Accident Insurance	No fee (\$500,000 Coverage)
Interest Charges	No fee
Replacement Card Fee	No fee
Implementation and Training Costs	No fee
Cash Advance (fee per transaction)	2.0% (\$2 minimum)
Executive Card Fee (annual fee per card)	Fee waived for up to 1% of cardholders (<i>Standard fee: \$100</i>)
Logo Card (one color)	Fee waived (<i>standard \$200 one-time setup fee</i>)
Centrally Billed Air Account Program <ul style="list-style-type: none"> ◆ Annual fee per master account ◆ Annual fee per subaccount 	Fee waived (<i>standard fee: \$150</i>) Fee waived (<i>standard fee: \$3</i>)
Access Online Access Online is a web-based tool for data exchange, access to statements and transaction information, reporting, and transaction management.	No fee

9.2 Billing and Payment. Each Transaction is either posted to a Cardholder Account and rolled up to a Central Account for billing or billed directly to a Central Account. The State will receive one or more central account Statements at the conclusion of each Billing Cycle for all Cardholder and/or Central Account Transactions. With respect to Transactions posted to a Cardholder Account and rolled up to a Central Account, the Cardholder receives a memo Statement showing his/her respective Transactions but with no amount due. Customer receives a consolidated Statement, which includes the total amount due for all Cardholder Accounts and Central Accounts and is responsible for ensuring the balance due on the Statement is paid by the Due Date. The State shall pay

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the amount due on the Statement by the Due Date.

9.3 Billing Disputes. Billing disputes must be communicated in writing to Contractor at U.S. Bank, P.O. Box 6344, Fargo, ND 58125-6344 or the address provided on the Statement. Contractor must receive written communication of a dispute within sixty (60) days of the date on the Statement on which the disputed or allegedly incorrect Transaction first appeared. Association regulations govern the resolution of all billing disputes.

9.4 Merchant Category Disclaimer. Upon request by the State, Contractor may either prevent or restrict usage of its card products to selected merchants based on Merchant Category Code. To the extent this is requested, the following disclaimers apply:

- a. **Limitation of Liability.** Contractor can only enforce Merchant Category Code restrictions to the extent it receives accurate Merchant Category Code data with the Transaction authorization request. Except regarding cash advances and ATMs, Contractor has no liability for Transactions declined or approved contrary to the intent of the State.
- b. **Incorrect Merchant Category Codes.** To the extent the State believes a merchant has not been assigned an accurate Merchant Category Code, Contractor will advise the Association of the inaccuracy. Whether or not the Merchant Category Code is changed is dependent upon applicable Association regulations.

9.5 Trailing Transactions. Upon cancellation of an Account, the State and/or Cardholder needs to cancel the billing of all reoccurring Transactions to the Account.

9.6 Liability. Customer is solely liable to Contractor for all billed Transactions.

- a. **Liability Exceptions.** Customer may be liable for all billed Transactions in the following circumstances:
 - i. **Failure to Notify; Liability Exceptions.** The State shall immediately notify Contractor by telephone at 1-800-344-5696 of any of the following:
 - (a) Termination of employment of any Cardholder and/or program company;
 - (b) Any lost or stolen Purchasing Card for which the State or Cardholder has knowledge or liability;
 - (c) Any compromised Account for which the State or Cardholder has liability and of which reasonably has knowledge; or

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- (d) Any compromised information regarding Purchasing Cards, Accounts and/or other sensitive data including, but not limited to, Account numbers, personal identification numbers, passwords, or Cardholder information of which the Cardholder or State reasonably has knowledge.

The State shall provide sufficient information as may be requested by Contractor for Contractor to act on such notifications. Failure of the State to provide notification may result in the State's liability to pay for all Transactions on such Purchasing Cards and/or Accounts. Liability is limited to the period of time from when notification should have been received to when notification is actually received and only for those Transactions that Contractor cannot either charge back to the merchant or collect directly from the Cardholder.

9.7 Delinquency. If the amount shown on the Statement as the current amount due has not been paid to Contractor by the State by the Due Date, Contractor shall have the following rights:

- a. **Suspension.** Contractor shall have the right to suspend any Account that is delinquent for a period exceeding two Billing Cycles.
- b. **Cancellation.** Contractor shall have the right to cancel any Account that is delinquent for a period exceeding three Billing Cycles.

10. **ACCESS AND RETENTION OF RECORDS**

10.1 Access to Records. The Contractor agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance. (Mont. Code Ann. § 18-1-118.)

10.2 Retention Period. The Contractor agrees to create and retain records supporting the statewide purchasing card program for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or a third party.

11. **ASSIGNMENT, TRANSFER AND SUBCONTRACTING**

Neither party shall assign, transfer or subcontract any portion of this contract without the express written consent of the other party. The Contractor shall be responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Contractor. No contractual relationships exist between any subcontractor and the State.

12. HOLD HARMLESS/INDEMNIFICATION.

The Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

13. REQUIRED INSURANCE

13.1 General Requirements. The Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

13.2 Primary Insurance. The Contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

13.3 Specific Requirements for Commercial General Liability. The Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors.

13.4 Additional Insured Status. The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds; for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.

13.5 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, or volunteers; or (2) at the expense of the Contractor, the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

13.6 Certificate of Insurance/Endorsements. A certificate of insurance from an

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insurer with a Best's rating of no less than A- indicating compliance with the required coverages, has been received by the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

14. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with sections 39-71-120, 39-71-401, and 39-71-405, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of the contract. A renewal document must be sent to the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135, upon expiration.

15. COMPLIANCE WITH LAWS

The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

16. INTELLECTUAL PROPERTY/OWNERSHIP

16.1 Mutual Use. All patent and other legal rights in or to inventions created in whole or in part and solely for the purpose of this contract must be available to the State for royalty-free and nonexclusive licensing. Both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, copyrightable property created under this contract including all deliverables and other materials, products, modifications developed or prepared for and paid by the State to Contractor under this contract or any program code, including site related program code, created, developed or prepared by Contractor under or in support of the performance of its obligations hereunder, including manuals, training materials and documentation (the "work product").

16.2 Title and Ownership Rights. The State shall retain title to and all ownership rights in all data and content, including but not limited to multimedia or images (graphics, audio and video), text and the like provided by the State (the "content"), but grants

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Contractor the right to access and use content for the purpose of complying with its obligations under this contract.

16.3 Ownership of Work Product. The parties agree to execute any documents or take any other actions as may reasonably be necessary, or as a party may reasonably request, to perfect the such party's ownership of any work product.

16.4 Copy of Work Product. Each party shall, at no cost to the other party, deliver to such party, upon the that party's request during the term or at the expiration or termination of all or part of such party's performance hereunder, a current copy of all work product in the form and on the media in use as of the date of the State's request, or as of such expiration or termination, as the case may be.

16.5 Ownership of Contractor Information. Techniques, sub-routines, algorithms and methods or rights thereto owned by Contractor at the time this contract is executed and employed by Contractor in connection with the services provided to the State (the "contractor information") shall be and remain the property of Contractor. Contractor grants to the State a limited, revocable, royalty free, restricted right to use Contractor information. Except as otherwise provided for in Section 16.3, Contractor shall retain title to and ownership of any hardware provided by Contractor.

17. PATENT AND COPYRIGHT PROTECTION

17.1 Third Party Claim. In the event of any claim by any third party against the State that the products furnished under this contract infringe upon or violate any patent or copyright, the State shall promptly notify Contractor. Contractor shall defend such claim, in the State's name or its own name, as appropriate, but at Contractor's expense. Contractor will indemnify the State against all costs, damages and attorney's fees that accrue as a result of such claim. If the State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

17.2 Product Subject of Claim. If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Contractor may, at its option, procure for the State the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by the State shall be prevented by injunction, the State will determine if the Contract has been breached.

18. CONTRACT OVERSIGHT

18.1 CIO Oversight. The Chief Information Officer (CIO) for the State of Montana, or designee, may perform contract oversight activities. Such activities may include the identification, analysis, resolution, and prevention of deficiencies that may occur within the performance of contract obligations. The CIO may require the issuance of a right to assurance or the issuance of a stop work order.

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18.2 Right to Assurance. If the State, in good faith, has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this contract, the State may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of days specified in the demand may, at the State's option, be the basis for terminating the contract under the terms and conditions or other rights and remedies available by law or provided by the contract.

18.3 Stop Work Order. The State may, at any time, by written order to the Contractor, require the Contractor to stop any or all parts of the work required by this contract for the period of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The State Project Manager shall make the necessary adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

19. CONTRACT TERMINATION

19.1 Termination for Cause. The State may, by written notice to the Contractor, terminate this contract in whole or in part at any time the Contractor fails to perform the contract pursuant to Section 20, Event of Breach – Remedies.

19.2 Bankruptcy or Receivership. Voluntary or involuntary Bankruptcy or receivership by either party may be cause for termination; except that the State may not be terminated if its bankruptcy plan provides for continuation of these services.

19.3 Non-Compliance with Department of Administration Requirements. The Department of Administration pursuant to section 2-17-514, MCA, retains the right to cancel or modify any contract, project or activity that is not in compliance with the Department's Plan for Information Technology, the State Strategic Plan for Information Technology, or any Statewide IT policy or standard in effect as of the date of contract signing.

19.4 Reduction of Funding. The State, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (Mont. Code Ann. § 18-4-313(3)).

19.5 Material Breach. The non-breaching party may terminate this contract in whole or in part in the event of the breaching party's failure to perform a material obligation of this contract.

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20. EVENT OF BREACH – REMEDIES

20.1 Event of Breach. Any one or more of the following acts or omissions of the Contractor shall constitute an event of breach:

- a. products or services furnished by the Contractor fail to conform to any requirement of the contract, or
- b. failure to submit any report required hereunder; or
- c. failure to perform any of the other covenants and conditions of the contract, including beginning work under this contract without prior Department of Administration approval.

20.2 State's Actions in Event of Breach. Upon the occurrence of any event of breach, the State may take any one, or more, or all, of the following actions:

- a. give the Contractor a written notice specifying the event of breach and requiring it to be remedied within, in the absence of a greater or lesser specification of time, 30 days from the date of the notice; and if the event of breach is not timely remedied, terminate this contract upon giving the Contractor notice of termination;
- b. give the Contractor a written notice specifying the event of breach and suspending all payments to be made under this contract and ordering that the portion of the contract price, which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the event of breach, shall never be paid to the Contractor;
- c. treat the contract as materially breached and pursue any of its remedies at law or in equity, or both.

21. WAIVER OF BREACH

No failure by either party to enforce any provisions hereof after any event of breach shall be deemed a waiver of its rights with regard to that event, or any subsequent event. No express failure of any event of breach shall be deemed a waiver of any provision hereof. No such failure or waiver shall be deemed a waiver of the right to enforce each and all of the provisions hereof upon any further or other breach on the part of the breaching party.

22. STATE PERSONNEL

22.1 State Contract Manager. The State Contract Manager identified below is the State's single point of contact and will perform all contract management pursuant to section 2-17-512, MCA, on behalf of the State. Written notices, requests, complaints or any other issues regarding the contract should be directed to the State Contract Manager.

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The State Contract Manager for this contract is:

Jeanne Wolf	(Name)
P.O. Box 200135	(Address)
Helena, MT 59620-0135	(City, State, ZIP)
(406) 444-7210	(Telephone #)
N/A	(Cell Phone #)
(406) 444-2529	(Fax #)
jwolf@mt.gov	(E-mail)

22.2 State Project Manager. The State Project Manager identified below will manage the day-to-day project activities on behalf of the State.

The State Project Manager for this contract is:

Thomas M. Gustin	(Name)
P.O. Box 200135	(Address)
Helena, MT 59620-0135	(City, State, ZIP)
(406) 444-3312	(Telephone #)
(406) 431-3312	(Cell Phone #)
(406) 444-2529	(Fax #)
tgustin@mt.gov	(E-mail)

23. **CONTRACTOR PERSONNEL**

23.1 Identification/Substitution of Personnel. The personnel identified or described in the Contractor's proposal shall perform the services provided for the State under this contract. Contractor agrees that any personnel substituted during the term of the contract must be able to conduct the required work to industry standards and be equally or better qualified than the personnel originally assigned. The State reserves the right to approve Contractor personnel assigned to work under the contract, and any changes or substitutions to such personnel. The State's approval of a substitution will not be unreasonably withheld. This approval or disapproval shall not relieve the Contractor to perform and be responsible for its obligations under this Contract. The State reserves the right to require Contractor personnel replacement. In the event that Contractor personnel become unavailable, it will be the Contractor's responsibility to provide an equally qualified replacement in time to avoid delays to the work plan.

23.2 Contractor Project Manager. The Contractor Project Manager identified below will manage the day-to-day project activities on behalf of the Contractor:

The Contractor Project Manager for this contract is:

Pam Miller	(Name)
17505 South Killdeer Road	(Address)
Beaver Creek, OR 97004	(City, State, ZIP)

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503/632-4682

(Telephone #)

503/632-4971

(Fax #)

pamela.miller@usbank.com

(E-mail)

24. **MEETINGS AND REPORTS**

24.1 Technical or Contractual Problems. The Contractor is required to meet with the State's personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract, at no additional cost to the State. Meetings will occur as problems arise and will be coordinated by the State. Failure to participate in problem resolution meetings or failure to make a good faith effort to resolve problems may result in termination of the contract.

24.2 Progress Meetings. During the term of the contract, the State's Project Manager will plan and schedule progress meetings with the Contractor to discuss the progress made by the Contractor and the State in the performance of their respective obligations. These progress meetings will include the State Project Manager, the Contractor Project Manager, and any other additional personnel involved in the performance of the contract as required. At each such meeting, the Contractor shall provide the State with a written status report that identifies any problem or circumstance encountered by Contractor, or of which Contractor gained knowledge during the period since the last such status report, which may prevent Contractor from completing any of its obligations or may generate charges in excess of those previously agreed to by the parties. This may include the failure or inadequacy of the State to perform its obligation under the contract. Contractor shall identify the amount of excess charges, if any, and the cause of any identified problem or circumstance and the steps taken to remedy the same.

24.3 Failure to Notify. In the event Contractor fails to specify in writing any problem or circumstance with respect to the period during the term covered by Contractor's status report, it shall be conclusively presumed for purposes of this contract that no such problem or circumstance arose during such period, and Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for either claiming it is entitled to receive any amount (including without limitation damages or additional charges arising out of a breach by the State of any State obligation) with respect to any of Contractor's obligations hereunder in excess of those previously agreed to; or failing to complete any of Contractor's obligations hereunder. Submission by Contractor of the status reports shall not alter, amend or modify Contractor's or the State's rights or obligations pursuant to any provision of this Contract.

24.4 State's Failure or Delay. For a problem or circumstance identified in the Contractor's status report in which Contractor claims was the result of the State's failure or delay in discharging any State obligation, the State shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If the State agrees as to the cause of such problem or circumstance, then the Parties shall extend any deadlines or due dates affected thereby, and provide for any additional charges by Contractor. If the State does not agree as to the cause of such problem or circumstance, the Parties shall each attempt to resolve the problem or circumstance in a manner

satisfactory to both Parties.

25. CONTRACTOR PERFORMANCE ASSESSMENTS

25.1 Assessments. The State may do assessments of the Contractor's performance. Contractors will have an opportunity to respond to assessments, and independent verification of the assessment may be utilized in the case of disagreement.

25.2 Record. Completed assessments may be kept on record at ITSD and may serve as past performance data. Past performance data will be available to assist agencies in the selection of IT service providers for future projects. Past performance data may also be utilized in future procurement efforts.

26. TRANSITION ASSISTANCE

If this contract is not renewed at the end of this term, or is terminated prior to the completion of a project, or if the work on a project is terminated, for any reason, the Contractor must provide for a reasonable period of time after the expiration or termination of this project or contract, all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. The State will notify Contractor of any request for transition services, including any request to permit Cards or Accounts to be used for a limited transition period and the State will be liable for Debt incurred during such transition period in accordance with the terms of this contract. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the contract. If there are no established contract rates, then the rate shall be mutually agreed upon. Upon cancellation or termination of this contract, including, if applicable, any transition period referenced under this Section 26, State will notify its Cardholders of such termination and instruct all Cardholders to cease using and destroy such Cards. State shall remain liable to Contractor for all Debts, including trailing transactions, arising from the use of a Card and/or Account.

27. CHOICE OF LAW AND VENUE

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See Mont. Code Ann. § 18-1-401.)

28. SCOPE, AMENDMENT AND INTERPRETATION

28.1 Contract. This contract consists of 32 numbered pages, any Attachments as required, RFP# SPB05-761G, as amended, Contractor's RFP response as amended, and Contractor's Best and Final Offer response. In the case of dispute or ambiguity about the

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minimum levels of performance by the Contractor the order of precedence of document interpretation is in the same order.

28.2 Entire Agreement. These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

29. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below.

**STATE OF MONTANA
DEPARTMENT OF ADMINISTRATION
STATE PROCUREMENT BUREAU**

U.S. BANK NATIONAL ASSOCIATION ND
200 South 6th Street, EP-MN-L26C
Minneapolis, MN 55402

BY: _____
(Name/Title)

BY: Charles L. Wilkins, Vice President
(Name/Title)

BY: _____
(Signature)

BY: _____
(Signature)

DATE: _____

DATE: _____

Approved as to Legal Content:

Chief Counsel (Date)
Department of Administration

Approved as to Form:

Procurement Officer (Date)
State Procurement Bureau

Chief Information Officer Approval:

The Contractor is notified that pursuant to section 2-17-514, MCA, the Department of Administration retains the right to cancel or modify any contract, project or activity that is not in compliance with the Agency's Plan for Information Technology, the State Strategic Plan for Information Technology, or any statewide IT policy or standard.

Chief Information Officer (Date)
Department of Administration

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PERFORMANCE VOLUME REBATE ADDENDUM

This Performance Volume Rebate Addendum ("**Rebate Addendum**") is entered into, by and between U.S. Bank National Association ND (the "**Contractor**") and the State of Montana, Department of Administration, State Procurement Bureau (the "**State**"), and constitutes an addendum to and modification of the Statewide Purchasing Card Program, T.C. # SPB05-761G contract dated March 21, 2005 (the "**Contract**") between the State and the Contractor. This Rebate Addendum shall become effective upon signing by or on the behalf of the Contractor ("**Effective Date**") and supersedes any previous and like addenda with the State.

The Contractor shall extend to the State the following Revenue Sharing opportunities:

1. (a) The Contractor will pay to the State a portion of their aggregate Net Annual Charge Volume through a rebate ("**Performance Rebate**"). The Performance Rebate will be based on the Client Held Days Payment Performance for all Accounts for each Rebate Addendum Year. The Performance Rebate calculation will be made in accordance with Table A, below.

Table A	
Client Held Days	Performance Rebate Percentage
14	0.000%
13	0.010%
12	0.020%
11	0.030%
10	0.040%
9	0.050%
8	0.060%
7	0.070%
6	0.080%
5	0.090%
4	0.100%
3	0.110%
2	0.120%
1	0.130%
0	0.140%

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- (b) The Contractor will pay to the State a portion of their aggregate Net Annual Charge Volume through a rebate ("**Volume Rebate**"). The Volume Rebate will be based on the Net Annual Charge Volume. The Volume Rebate calculation will be made in accordance with Schedule A, attached hereto and made a part hereof.

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- (c) No rebate calculation shall be made unless the Client Held Days Payment Performance for all Account Statements is equal to or less than 14 Client Held Days and the Net Annual Charge Volume is equal to or greater than five million U.S. Dollars

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(\$5,000,000.00). Any Revenue Share payment made pursuant to this Rebate Addendum will be net of accumulated Charge-offs resulting from participation in the Contractor or U.S. Bancorp Card Services, Inc. programs regardless of whether the underlying Contract between the parties is valid or has been terminated. The first Revenue Share payment, if any, shall be made within 90 days after the end of the Rebate Addendum Year. Subsequent calculations and payments, if any, shall be made in a similar fashion on each 12 month anniversary of the first calculation. If any Revenue Share payment date falls on a non-business day, Revenue Share payments due shall be made on the next business day.

(d) The Contractor will calculate the Net Annual Charge Volume for the Rebate Addendum Year to find the Volume Rebate Percentage on Schedule A for the Volume Rebate. The Contractor will calculate the Client Held Days Payment Performance for the same Rebate Addendum Year to find the Performance Rebate Percentage on Table A for the Performance Rebate. Annually, the Contractor will multiply the Total Rebate Percentage by the Net Annual Charge Volume for that same Rebate Addendum Year. The result will be the gross Revenue Share. The Contractor will subtract any Charge-offs that have not been subtracted at any time during any of the past Rebate Addendum Year(s) from the gross Revenue Share. The result will be the net Revenue Share. Any Charge-offs in excess of the net Revenue Share from one Rebate Addendum Year will be subtracted from one or more of the following Rebate Addendum Year(s).

2. Capitalized terms used in this Rebate Addendum and not otherwise defined in this Rebate Addendum are used with the same respective meanings attributed thereto in the Contract. **“Client Held Days”** means the actual number of days from billing cycle date to the date the Contractor applies payment (annual per statement cycle average). Accordingly, the **“Client Held Days Payment Performance”** is the average speed of repayment of charges made for each Rebate Addendum Year. **“Net Annual Charge Volume”** means all Charges set forth on the Statements furnished for all Accounts, less Fees, Fraudulent Charges, chargebacks, Charges qualifying for large transaction interchange rates and amounts Charged-off by the Contractor with respect to such Accounts as uncollectible for each 12 month period beginning with the first such period following the Effective Date of this Rebate Addendum (a **“Rebate Addendum Year”**). **“Revenue Share”** is the combination of the Performance Rebate and Volume Rebate. **“Total Rebate Percentage”** means the sum total of the Performance Rebate Percentage and the Volume Rebate Percentage.

3. This Rebate Addendum shall terminate upon termination of the Contract and all rights hereunder shall cease.

4. Except to the extent that the Contract is expressly or implicitly modified by this Rebate Addendum, all terms and conditions of the Contract remain in full force and effect.

STATEWIDE PURCHASING CARD PROGRAM

In witness whereof, the parties hereto have, by their duly authorized representatives, executed this Rebate Addendum.

STATE OF MONTANA
DEPARTMENT OF ADMINISTRATION
STATE PROCUREMENT BUREAU

U.S. BANK NATIONAL ASSOCIATION ND
200 South 6th Street, EP-MN-L26C
Minneapolis, MN 55402

BY: _____
(Name/Title)

BY: Charles L. Wilkins, Vice President
(Name/Title)

BY: _____
(Signature)

BY: _____
(Signature)

DATE: _____

DATE: _____

Approved as to Legal Content:

Chief Counsel (Date)
Department of Administration

Approved as to Form:

Procurement Officer (Date)
State Procurement Bureau

STATEWIDE PURCHASING CARD PROGRAM

PERFORMANCE VOLUME REBATE ADDENDUM**SCHEDULE A**

Net Annual Charge Volume	Volume Rebate Percentage
\$5,000,000.00	0.8510%
\$10,000,000.00	0.8760%
\$15,000,000.00	0.9010%
\$17,500,000.00	0.9500%
\$20,000,000.00	0.9910%
\$22,500,000.00	1.0270%
\$25,000,000.00	1.0580%
\$27,500,000.00	1.0870%
\$30,000,000.00	1.1130%
\$32,500,000.00	1.1260%
\$35,000,000.00	1.1350%
\$37,500,000.00	1.1420%
\$40,000,000.00	1.1500%
\$42,500,000.00	1.1570%
\$45,000,000.00	1.1630%
\$47,500,000.00	1.1700%
\$50,000,000.00	1.1740%
\$52,500,000.00	1.1780%
\$55,000,000.00	1.1830%
\$57,500,000.00	1.1870%
\$60,000,000.00	1.1900%
\$62,500,000.00	1.1940%
\$65,000,000.00	1.1990%
\$67,500,000.00	1.2030%
\$70,000,000.00	1.2070%
\$72,500,000.00	1.2110%
\$75,000,000.00	1.2150%

STATEWIDE PURCHASING CARD PROGRAM

INCENTIVE PAYMENT ADDENDUM

This Incentive Payment Addendum (“**Incentive Payment Addendum**”) is entered into, by and between U.S. Bank National Association ND (the “**Contractor**”) and the State of Montana, Department of Administration, State Procurement Bureau (the “**State**”), and constitutes an addendum to and modification of the Statewide Purchasing Card Program, T.C. # SPB05-761G contract dated March 21, 2005 (the “**Contract**”) between the State and the Contractor. This Incentive Payment Addendum shall become effective upon signing by or on the behalf of the Contractor (“**Effective Date**”) and supersedes any previous and like addenda with the State.

The Contractor shall extend to the State the following Incentive Payment opportunity:

1. As a growth incentive, Contractor will provide a year-over-year growth incentive payment for increases in annual spend volume. Contractor will pay 0.150% of the incremental year-over-year spend volume increase (the “**Incentive**”).
2. If the State has earned such an Incentive, Contractor will pay the State within 90 days after the end of the Addendum Year. An “**Addendum Year**” is each twelve (12) month period beginning with the first such period following the Effective Date of this Addendum. Any Incentive payment made pursuant to this Rebate Addendum will be net of accumulated Charge-offs resulting from participation in the Contractor or U.S. Bancorp Card Services, Inc. programs regardless of whether the underlying Contract between the parties is valid or has been terminated. Subsequent calculations and payments, if any, shall be made in a similar fashion on each 12 month anniversary of the first calculation. If any Revenue Share payment date falls on a non-business day, Revenue Share payments due shall be made on the next business day.
3. Except to the extent that the Contract is expressly or implicitly modified by this Incentive Payment Addendum, all terms and conditions of the Contract remain in full force and effect.

STATEWIDE PURCHASING CARD PROGRAM

In witness whereof, the parties hereto have, by their duly authorized representatives, executed this Incentive Payment Addendum.

**STATE OF MONTANA
DEPARTMENT OF ADMINISTRATION
STATE PROCUREMENT BUREAU**

U.S. BANK NATIONAL ASSOCIATION ND
200 South 6th Street, EP-MN-L26C
Minneapolis, MN 55402

BY: _____
(Name/Title)

BY: Charles L. Wilkins, Vice President
(Name/Title)

BY: _____
(Signature)

BY: _____
(Signature)

DATE: _____

DATE: _____

Approved as to Legal Content:

Chief Counsel (Date)
Department of Administration

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